

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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75-4249

United States Court of Appeals
FOR THE SECOND CIRCUIT

PITTSTON STEVEDORING CORPORATION,
Petitioner,

v.

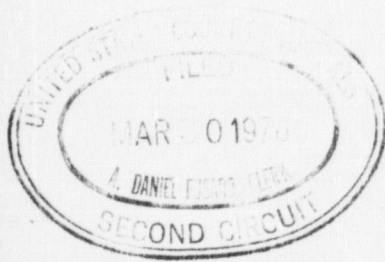
JOHN SCAFFIDI,
Respondent.

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P/s

APPENDIX

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Petition for Review.

United States Court of Appeals
FOR THE SECOND CIRCUIT

PITTSTON STEVEDORING CORPORATION,

Petitioner,

v.

JOHN SCAFFIDI,

Respondent.

The Pittston Stevedoring Corporation hereby petitions the Court for Review of the Order of the Benefits Review Board, United States Department of Labor, entered on December 8, 1975 which affirmed an Order of Administrative Law Judge Thomas F. Howder, which established that the claim of John Scaffidi, Respondent comes within the purview of the Longshoremen's and Harbor Workers Compensation Act, as amended 33 U.S.C. 901 et seq.

Dated February 5, 1976.

JOSEPH F. MANES
Attorney for Petitioner

**Decision and Order of Affirmance of the Benefits
Review Board.**

U.S. DEPARTMENT OF LABOR
BENEFITS REVIEW BOARD
Washington, D.C. 20210

JOHN SCAFIDDI

Claimant-Respondent

v.

PITTSTON STEVEDORING CORPORATION

Employer-Petitioner

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
UNITED STATES DEPARTMENT OF LABOR

Party in Interest

FILED AS PART
OF THE RECORD
DEC 8 1975
(date)

(Illegible)
(Clerk)

Benefits Review Board
BRB No. 75-165

DECISION

Appeal from the Decision and Order of Thomas F.
Howder, Administrative Law Judge, United States De-
partment of Labor.

*Decision and Order of Affirmance of the Benefits
Review Board.*

Angelo C. Gucciardo (Israel, Adler, Ronca & Gucciardo)
New York, New York, for claimant.

Joseph F. Manes, New York, New York, for the em-
ployer.

Jean S. Cooper (William J. Kilberg, Solicitor of Labor,
Laurie M. Streeter, Associate Solicitor), Washington,
D. C., for Director, Office of Workers' Compensation
Programs, United States Department of Labor.

Before: Washington, Chairperson, Hartman and Miller,
Members.

Miller, Member:

This appeal by the employer seeks review and reversal of a Decision and Order (75-LHCA-23) of Administrative Law Judge Thomas F. Howder in which the claimant was awarded compensation for temporary total disability, permanent partial disability, medical expenses, interest and attorney's fees. The claim arises pursuant to provisions of the Longshoremen's and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901 *et seq.* (hereafter referred to as the Act).

The claimant sustained injuries to his head, right shoulder, left hip and left foot on March 12, 1973. These injuries arose in and out of his employment, with the employer as a "hustler" operator, engaged in moving containers within a terminal. He backed a container up to a receiving platform at a pier in preparation for loading aboard ship. Upon opening the container door, a large crate fell out and struck the claimant.

The administrative law judge found that the claimant's injuries were sustained under circumstances which are within the coverage provisions of the Act. Extent and

*Decision and Order of Affirmance of the Benefits
Review Board.*

duration of disability were stipulated by the parties. Compensation was awarded accordingly.

In this appeal, the employer contends that the claimant's injury is not within the coverage of the Act and that to find it to be within the coverage of the Act would require an unconstitutional extension of Congress' authority to legislate in admiralty matters.

The Board rejects the employer's arguments and agrees with the administrative law judge. This injury did occur under circumstances which are within the jurisdictional requirements of Sections 2(3), (4) and 3(a) of the Act. 33 U.S.C. §§ 902(3), (4), 903(a).

In an earlier decision, this Board found that the operator of a "hustler", used to transport containers within a terminal, is engaged in an essential step in the overall process of loading cargo aboard a vessel, which is maritime employment as contemplated by Section 2(3). *Harris v. Maritime Terminals, Inc.*, 1 BRBS 301, BRB No. 74-178 (Feb. 3, 1975). The fact that the container with which the claimant was working had been transported over public streets from one pier to another is of no consequence in determining coverage under the Act. *Blundo v. International Terminal Operating Company, Inc.*, 2 BRBS 376, BRB No. 75-142 (Oct. 30, 1975); *Stockman v. John T. Clark & Son of Boston, Inc.*, 2 BRBS 29, BRB No. 74-231 (July 30, 1975). There is no question that the employer is an "employer" as defined in Section 2(4). *Blundo v. International Terminal Operating Company, Inc.*, *supra*; *Harris v. Maritime Terminals Inc.*, *supra*. Finally, the claimant was injured at the loading dock at Pier 12, Brooklyn, New York, inside a fenced terminal, a location clearly within the expanded area of coverage of Section 3(a). *Lopez v. Atlantic Container Lines, Ltd.*, 2 BRBS 265, BRB No. 75-117 (Sept. 9, 1975).

The employer's argument regarding the constitutionality of the shoreside extension of the Act by Congress to cover

*Decision and Order of Affirmance of the Benefits
Review Board.*

employees such as the claimant must be rejected. The Board's views on this subject have been adequately discussed in *Coppolino v. I.T.O. Co., Inc.*, 1 BRBS 205, BRB No. 74-136 (Dec. 2, 1974).

The claimant's attorney has requested approval of a fee for services rendered in successful defense of the employer's appeal before this Board. Having submitted to the Board a complete, itemized statement of the extent and character of the necessary legal services rendered, in accordance with the applicable Rules and Regulations, 20 C.F.R. §§ 702.132, 802.203, the claimant's attorney is hereby awarded a fee of \$500 to be paid directly to him by the employer in a lump sum. 33 U.S.C. § 928.

The Decision and Order appealed from is affirmed in all respects.

JULIUS MILLER
Julius Miller, Member

We Concur:

RUTH V. WASHINGTON
Ruth V. Washington, Chairperson

RALPH M. HARTMAN
Ralph M. Hartman, Member

Dated this 8th day
of December 1975

Decision and Order of Administrative Law Judge.

U.S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
Washington, D.C. 20210

[S A M E T I T L E]

Angelo C. Gucciardo, Esq.
Israel. Adler, Ronca & Gucciardo

For the Claimant

Philip F. DiCostanzo, Esq.
DiCostanzo, Klonsky & Cutrona

For the Respondents

Jean S. Cooper, Esq.
(William J. Kilberg, Solicitor of Labor
Marshall H. Harris, Associate Solicitor of Labor)
For the Director, Office of
Workers' Compensation Programs
United States Department of Labor
Party in Interest

Before: THOMAS F. HOWDER
Administrative Law Judge

DECISION AND ORDER

This proceeding involves a claim arising under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, as amended, 33 U.S.C. 901, *et seq.* (hereinafter "Act") and the Rules and Regulations implementing the Act, 20 C.F.R. Parts 701 and 702.

Decision and Order of Administrative Law Judge.

A hearing in this case was held before me in New York, New York, on October 24, 1974. The claimant and respondents were represented by counsel at the hearing, and were afforded full opportunity to be heard, to adduce evidence, to call, examine and cross-examine witnesses and to file briefs. A brief in this matter was also filed on behalf of the Director, Office of Workers' Compensation Programs.

Upon the entire record in this case, and from my observation of the witnesses and their demeanor, I make the following findings, conclusions and Order:

Findings and Conclusions

It was stipulated at the hearing that:

1. Claimant was injured on March 12, 1973, at which time he was employed by employer.
2. Claimant's accidental injury arose in and out of his employment with employer.
3. Timely notice of injury was given and the claim was timely filed.
4. For the year prior to injury, claimant's average weekly wage was in excess of \$250.50.
5. Claimant was temporarily totally disabled from March 13, 1973, through September 9, 1973, for a period of 25 6/7 weeks, as a result of his injury.
6. Employer/carrier has paid claimant \$2,090 pursuant to New York law.
7. If there is coverage under the Act, claimant is permanently partially disabled to the degree of 9% of his right arm and permanently partially disabled to a degree of 10% of his left foot.

Decision and Order of Administrative Law Judge.

8. Claimant is entitled to compensation at the rate of \$167 per week if he is found to be covered by the Act.

The only issues in dispute are:

- (1) Whether claimant's injury is within the coverage of the Act, as amended.
- (2) Whether the extension of Act's coverage to the land is constitutional.

Neither issue requires extended discussion.

I

The question of coverage is controlled by BRB decisions in numerous cases. See *Gilmore v. Weyerhaeuser Co.*, BRB No. 74-141 (Nov. 12, 1974); *Avvento v. Hellenic Lines*, BRB No. 74-153 (Nov. 12, 1974); *Adkins v. I.T.O. Corp.*, BRB 74-123 (Nov. 29, 1974); *Coppolino v. International Terminal Operating Co.*, BRB No. 74-136 (Dec. 2, 1974); *Brown v. Maritime Terminals*, BRB Nos. 74-177 and 177A (December 6, 1974); *Herron v. Brady-Hamilton Stevedore Co.*, BRB No. 74-171 (Jan. 23, 1975); *Perdue v. Jacksonville Shipyards, Inc.*, BRB No. 74-200 (Jan. 31, 1975); *Harris v. Maritime Terminals, Inc.*, BRB No. 74-178 (Feb. 3, 1975); *Kelley v. Handcor, Inc.*, BRB Nos. 74-165 and 74-165A (Feb. 23, 1975); *Mason v. Old Dominion Stevedoring Corp.*, BRB Nos. 74-182 and 74-182A (Mar. 21, 1975); and *Ford v. P. C. Pfeiffer Co.*, BRB Nos. 74-191 and 74-191A (March 21, 1975).

On the day of the injury, claimant was driving a "hustler", a vehicle used to move containers. He had backed a container up to a receiving platform at a pier in preparation for loading aboard ship. Upon opening the container door, a large box or case fell out and hit claimant on the head, shoulder, hip and foot.

Decision and Order of Administrative Law Judge.

Claimant's work activity in this case is identical or substantially similar to the activity found to be "maritime employment" in the *Harris* case, *supra*. The claimant in that case was likewise a "hustler" operator engaged in moving containers about the terminal. The rationale of that case is itself sufficient to resolve the issues of coverage in favor of claimant, and I so find.

II

Respondents also contend that if the 1972 amendments to the Act are construed to extend jurisdiction to include claimant's work activity, such extension would be unconstitutional. The Benefits Review Board has rejected similar arguments in *Coppolino v. International Terminal Operating Co., Inc.*, BRB No. 74-136 (December 2, 1974), and *Kelley v. Handcor, Inc.*, BRB Nos. 75-165 and 74-165A (February 28, 1975), which are controlling here. In any event, although the constitutional question is properly asserted in this administrative proceeding, final jurisdiction to pass on the constitutionality of an act of Congress is a prerogative of the judicial branch of the Government if judicial review is sought. See *Knowles v. Hirsch*, 65 F. Supp. 690 (D. D.C. 1946); *DuBois Clubs v. Clark*, 389 U.S. 309 (1967); *Irey v. Hodgson*, 354 F. Supp. 20 (H.D. W. Va. 1972), *aff'd* 409 U.S. 1070.

On the basis of the foregoing findings and conclusions, I issue the following:

ORDER

1. Respondents shall pay to claimant, pursuant to Section 8(b) of the Act, compensation for temporary total disability for the period March 13, 1973 through September 9, 1973, at the maximum compensation rate permitted as of the time of the injury, *i.e.*, \$167 per week.

Decision and Order of Administrative Law Judge.

2. Respondents are liable for all reasonable medical expenses incurred by claimant by reason of his injury, pursuant to Section 7 of the Act.

3. Respondents shall pay to claimant compensation for permanent partial scheduled disability, pursuant to Section 8(c) of the Act, for 9% loss of use of his right arm and 10% loss of use of his left foot.

4. Interest on accrued payments to claimant shall be paid at the rate of 6% per annum, computed from the date each payment was originally due.

5. A fee for legal services rendered to claimant, and for expenses incurred in this litigation, is approved in favor of Angelo C. Gucciardo, Esq., in the amount of \$1,966.25, which shall be paid directly to him by respondents.

THOMAS F. HOWDER
Thomas F. Howder
Administrative Law Judge

Dated: April 29, 1975
Washington, D. C.

Report of Proceedings.

UNITED STATES DEPARTMENT OF LABOR

[S A M E T I T L E]

26 Federal Plaza
New York, New York

Thursday, October 24, 1974
10:00 o'clock a.m.

Met, pursuant to notice issued August 20, 1974

Before: THOMAS F. HOWDER, Administrative Law Judge.

APPEARANCES:

ANGELO C. GUCCIARDO, Esq., Attorney for the Claimant.

PHILIP F. DiCOSTANZO, Esq., Attorney for the Employer &
Carrier.

The Court: On the record.

The hearing will come to order.

This is a hearing in the matter of the Claim for Compensation under the Longshoremen's and Harbor Workers' Compensation Act in the case of John Scaffiddi versus Pittston Stevedoring Corporation with Gulf Insurance Company being the carrier.

This is Case No. 75-LHCA-23, formerly Case No. 2-27124.

I am Thomas F. Howder, the Administrative Law Judge.

I would like to call upon counsel to identify themselves for the record.

Mr. Gucciardo: Angelo C. Gucciardo, from the firm of Israel, Adler, Ronca & Gucciardo, 160 Broadway, New York, New York, 10038, telephone number 212-227-1350.

Report of Proceedings.

The Court: Counsel for the respondent?

Mr. DiConstanzo: Philip F. DiCostanzo from the firm of DiCostanzo, Klonsky and Cutrona, 66 Court Street, Brooklyn, New York, Triangle 5-0155.

The Court: Do you have an associate counsel with you, sir?

Mr. DiConstanzo: Sir?

The Court: Do you have an associate counsel with you?

Mr. DiConstanzo: No, he is my preparation man.

The Court: All right.

This hearing is being held pursuant to notice issued August 20th, 1974, and counsel are advised that any papers, documents or exhibits previously submitted to or filed with the Deputy Commissioner are not part of this record.

I would like to inquire of counsel at this point whether they have been able to come to any agreement respecting any of the matters that may be involved in this proceeding?

Mr. Gucciardo: Yes.

Mr. DiConstanzo: Yes.

We have agreed, number one, that the claimant was injured on March 12, 1973, at which time he was employed by Pittston Stevedoring Corporation.

Number two, we stipulate that claimant's accidental injury arose out of during the course of his employment on that date.

Three, that there was timely notice given both of the injury and of the claim.

Four, that for the year prior to the accident, the claimant earned \$16,708.70, giving him an average weekly wage of \$250.50.

The Court: How much was the average weekly wage?

Mr. Gucciardo: In excess of \$250.50 allowing a maximum compensation rate of 167.

Mr. DiConstanzo: Yes.

We further agree that by reason of his injuries, the

Report of Proceedings.

claimant was disabled from March 13, 1973, through September 9, 1973, for a period of 25 and 6/7th weeks.

Mr. Gucciardo: For which he is entitled to a compensation rate of \$167 per week.

Mr. DiConstanzo: Making a total amount of \$4,318.14 for his period of temporary total.

That the employer and carrier have paid under New York City law \$2,090.

Mr. Gucciardo: In addition, we have agreed that in the event you find in favor of the claimant, that he is entitled to permanent partial disability of the right upper extremity in the amount of nine per cent, and for permanent partial disability of the left foot in the amount of ten per cent.

At this point, I would like to ask my adversary if he admits that the Pittston Stevedoring Company carries coverage for insurance under the Longshoremens and Harbor Workers' Compensation Act?

Mr. DiConstanzo: Covers?

Mr. Gucciardo: Yes.

Mr. DiConstanzo: You mean present?

Mr. Gucciardo: Not that you concede it in this case, but that you carry coverage in the event of an accident.

Mr. DiConstanzo: Yes.

Mr. Gucciardo: All right.

The Court: Mr. Gucciardo, you said nine per cent?

Mr. Gucciardo: Of the right arm.

The Court: And ten per cent of the what?

Mr. Gucciardo: Left foot.

I can give you the calculation, the right arm would be 28.8 weeks of compensation; the left foot would be 20.5 weeks, and both would be payable at the rate of \$167 per week.

The Court: Mr. Gucciardo, what do you think is the issue in this case?

Mr. Gucciardo: The issue, as I understand that is being raised by the carrier, is one of jurisdiction.

Report of Proceedings.

The Court: Is that correct?

Mr. DiConstanzo: That is correct.

Mr. Gucciardo: I would like, however, for the carrier to be a little bit more specific. Are they alleging the activities are not covered, that Congress did not have the right because this way I can try my case on the specific points raised.

The Court: May I hear from counsel for the respondent?

Mr. DiConstanzo: Number one, that the extension of the Act is discriminate to shoreside employees is unconstitutional.

Number two, it was never the intention of Congress to extend the coverage of the Act to this particular case as in the amendment they tacked on the words "loading and unloading", and this man has nothing to do with loading and/or unloading.

The Court: Counsel for the claimant, would you like to present your case?

Mr. Gucciardo: Yes, sir, I would.

I call the claimant John Scafiddi.

The Court: Will you come forward and be sworn, please.

JOHN SCAFIDDI

the claimant herein, having been first duly sworn by the Reporter, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Gucciardo) Will you please give your name and address for the record? A. John Scafiddi, 149-29 25th Street, Rosedale.

Q. Mr. Scafiddi, what is your occupation? A. I'm a longshoreman.

Report of Proceedings.

Q. And how long have you been a longshoreman? A. Since 1947.

Q. And as a longshoreman, would you tell us where you perform your duties? A. On ships, on docks, on piers, whatever.

Q. When you work on ships, would you tell us what is it that you do on ships? A. Unload and load.

Q. Cargo? A. Cargo, freight, containers, whatever it is.

Q. When you work on the dock, would you tell us what type of work you are engaged in? A. Loading and unloading. Stowing cargo on the pier.

Q. Where does the cargo come from that you stow on the pier? A. From the ship.

Q. And if it is cargo that has to be shipped out to a foreign port or another port, be it domestic or foreign—
A. It is discharged from a truck.

Q. Is all of this activity—it is conducted where, please?
A. On the pier.

Q. Have you been employed by Pittston Stevedoring Company, Incorporated? A. Yes.

Q. For how long have you been employed by them? A. Twenty-five years.

Q. When you work on the dock, is there a special name that is given to this dock work? A. It is terminal labor, extra labor which you do whatever they want you to do, you go on the ship, you unload a ship, load a ship, or go into a—

Q. When you say terminal labor, you unload a ship, what do you unload on a ship as terminal labor? A. Whatever has to go on the ship.

Q. Do you know what ship stores are? A. Food for the crew.

Q. Who loads that on the vessel? A. Longshoremen.

Q. What specific classification of longshoremen? A. Terminal labor.

Report of Proceedings.

Q. Does terminal labor have anything to do with the loading and unloading of lighters? A. Yes.

Q. Is that a task specifically assigned to terminal labor? A. Yes.

Q. Have you done personally this type of work? A. Yes, I have.

Q. Have you done this type of work of loading and unloading lighters for Pittston Stevedore? A. Yes.

Mr. DiConstanzo: I will object to the question unless we specify a time. He may have done this 25 years ago, 20 years ago.

The Court: Can you be more precise.

Mr. DiConstanzo: Let's take a year.

Mr. Gucciardo: I'll be more specific, your Honor.

It is my contention, and I want to develop the record along these lines, that we not only have to look to what a man was doing at the time of the accident, but we have to look at his general classification in working for this company.

The Court: You're trying to develop his general duties?

Mr. Gucciardo: Yes.

The Court: I understand the objection and I have your point in mind. I want to let him make his record as he sees it. I'll let him ask the general duties of this individual.

Mr. DiConstanzo: Unless he specifies a time, I am going to object.

Mr. Gucciardo: I'm getting to that.

The Court: Let's see if we can proceed.

Q. Primarily working for Pittston Stevedoring Company, what is it that you actually do? A. Like I say, I work driving on the dock, I loaded ships, I unloaded ships, I brought pallets.

Report of Proceedings.

Q. Let me interrupt you. As a driver, what type of equipment do you drive? A. Fork-lifts, travel trucks, hustlers, stackers.

Q. Let's get back to one at a time.

You said a fork-lift. Will you describe what a fork-lift does? A. A fork-lift lifts cargo from the pier that is on a pallet and it is either brought to a ship or to a truck.

Q. When it is brought to a truck, who owns the truck on which it is loaded usually? A. Pittston Stevedore, or an outside truck.

Q. Actually, does Pittston Stevedoring use their own trucks to deliver merchandise to the consignees? A. No.

Q. So that when you're loading a truck with cargo that is destined for a consignee, is that always loaded on a consignee's truckman? A. Yes.

Q. To get the record clear, you mentioned the word pallets, is that the slabs of wood on a platform? A. That is the 4 by 6 platform.

Q. Which has 2 by 4s? A. Yes.

Q. In between the slabs of wood? A. Yes.

Q. And is the cargo then tiered or stacked on the pallet? A. Right.

Q. And the Hi-Lo then comes with the fork-lift and sticks the metal forks inside of the slots created by the 2 by 4s? A. Right.

Q. Lifting the draft or the pallet completely? A. Right.

Q. Now, you mentioned, I think, a hustler. Did you say a word hustler? A. Yes, a hustler.

Q. Will you tell us what is the function of a hustler? A. That is a specialized piece of equipment that you hook into a boogie that they put a container on that they transport. They go from the ship to the dock, or from the dock to the ship, one or the other.

Q. Can this be classified generally as a tractor? A. Yes.

Q. And it pulls the containers? A. Right.

Report of Proceedings.

Q. Is that right? A. Yes.

Q. Is the tractor called a boogie because it is a highly specialized type of tractor being very maneuverable in tight spaces? A. Yes.

Q. You mentioned the word boogie. Just to clarify the record, is a boogie—

Mr. DiConstanzo: I'm going to object to the leading, please.

Mr. Gucciardo: All right.

Mr. DiConstanzo: I permitted it so far.

Mr. Gucciardo: Counsel is correct in the objection, your Honor, but since this is common knowledge, I thought perhaps he would shorten the hearing by allowing me to lead.

The Court: A certain amount of leading is all right. Just try to keep it down.

Q. What is a boogie and its function? A. A special chassis that they land the container on when they take it off the ship and bring it out to the farm area.

Q. Does it have wheels? A. Yes.

Q. After the container is landed on the boogie, what happens to it, how is it pulled? A. You hook on with the hustler.

Q. And you take it where? A. Wherever they want you to bring it, out into the farm area, the terminal area, wherever it is.

Q. You mentioned the farm area— A. The farm area is part of the pier.

Q. Part of the pier? A. Yes.

The Court: Is that farm?

Mr. Gucciardo: F-a-r-m area.

Q. Just to clarify it, is the farm area adjacent to, adjoining the water's edge? A. Yes.

Report of Proceedings.

Q. Is this an area maintained by your employer, the Pittston Stevedoring Company? A. Yes, it is.

Q. Are you a member of a union? A. International Longshoremen's Association.

Q. How long have you been a member of this union? A. Since 1947.

Q. Do you have an identification card issued by the New York Shipping Association International Longshoreman's Association? A. Yes, I have.

Q. For work purposes? A. For work purposes. The Waterfront Commission gives you this to go and badge in if you don't have a job.

Q. When you say the Waterfront Commission, what is that? Will you describe that for us?

Mr. DiConstanzo: You can read into the record what it is.

Mr. Gucciardo: Counsel will agree that the Waterfront Commission is a bi-state agency created by the Legislature of New York and New Jersey, and the sole function of that agency is to create hiring halls and to control the hiring of longshoremen in the New York and New Jersey area.

Q. Whenever you're looking for work outside of your own company, are you required to go to the hiring hall? A. Yes.

Q. Is this an IBM card that you stick into a machine? A. Right.

Q. And it tells you whether you're eligible to work or not? A. Yes.

Mr. DiConstanzo: Will you please also add to that stipulation that that bi-state agency also controls the work force as to pier guards, as to carpenters, as to lashers, as to maintenancemen, et cetera.

Report of Proceedings.

The Court: Is that correct?

Mr. Gucciardo: That is correct.

As a matter of fact, I'll have the witness clarify that because I think it should come out more directly.

Q. Does the Waterfront Commission control all the manual labor work that is done on the piers? A. As far as I know.

Q. And all of the men hired for manual work on the waterfront must go through the Waterfront Commission hiring halls? A. Yes.

Mr. Gucciardo: I would just like the record to indicate, and I'm going to read into the record, this identity card for the reason that he requires it on a daily basis and it cannot be offered in evidence.

The card specifies NYSA-ILA Seniority Card, which stands for New York Shipping Association—International Longshoremen's Association. Rating of A 3 for seniority.

SS No. 114125237. J. Scaffidi.

It says pier and a number 03374004, Local 1814.

Q. Is that a local of the International Longshoremen's Association? A. Yes.

Mr. Gucciardo: It also says WC number 09964.

Q. Is that the waterfront number assigned to you? A. Yes.

Q. Assigned to you by the Waterfront Commission? A. Yes.

Q. I believe you were in the process of describing the various equipment that you drove when I started that last line of questioning.

You said you used a hustler, you used boogies, and did you mention Hi-Los or not, I don't recall? A. Yes.

Q. Hi-Los? A. Yes.

Report of Proceedings.

Q. Any other kind of equipment? A. Tractors and trailers, load beds that we ride machinery on, plus cargo, gear, pallets that we transport from pier to pier.

Q. Is all of this equipment mentioned, special equipment used entirely in the loading and unloading of vessels? A. It belongs to Pittston Stevedore.

Q. Is it used for that purpose? A. Yes.

Mr. DiConstanzo: I'll object to the question because it asks for a conclusion.

Mr. Gucciardo: I think the witness is qualified, since he has been in this field since 1942, to answer it.

The Court: He can answer if he knows.

Do you know?

The Witness: Yes, everything I worked on is used for the loading and unloading of ships.

The Court: And the equipment that counsel has described?

The Witness: The equipment that counsel described.

Mr. DiConstanzo: I'll object to the question as being too vague and indefinite because we still haven't gotten down to the definition of what is loading and unloading.

Perhaps indirectly, as a matter of fact, indirectly a truck driver bringing merchandise to the pier, indirectly he is connected with the loading and unloading.

How far can we stretch it, we don't know.

The Court: I think that is the legal issue here.

Mr. Gucciardo: Yes.

The Court: I won't be bound by the witness' statement as to what he considers loading or unloading to determine that.

Report of Proceedings.

I see your point and I'll keep it in mind as we go along.

Mr. DiConstanzo: All right.

Q. Will you describe for us the sequence of events that physically take place when merchandise or cargo is delivered to Pittston Stevedoring Company until that cargo gets on board a vessel? How is it received, where is it put, who handles it, and so forth? A. It is stowed on a pallet. The fork-lift picks it up.

Q. Let's start from the beginning.

The truckman delivers it. A. It comes into the area.

Q. Is that pier area within the control of the Pittston Stevedoring Company? A. Yes.

Q. Who unloads the truck? A. The longshoremen.

Q. Using what equipment? A. Fork-lifts.

Q. Do they also work by hand? A. Yes.

Q. After it is unloaded from the truck, where does it go? A. Stowed in the pier.

Q. And then after it is stowed on the pier, where does it go? A. Goes into the ship when the ship comes to receive it.

Q. Is there sometimes an intervening operation with containers? A. Yes, in between.

Q. What happens in relation to the containers as far as the cargo is concerned? A. They are taken off, stowed previous to going aboard a vessel, or taken off and stowed in the vicinity of the pier.

Q. Is there a system that they use in having the cargo arrive in relation to the ship's arrival? A. Yes, the cargo is supposed to arrive so many days before the ship arrives so it will be there when the ship arrives, and so many days after.

Q. How many days is that usually, if you know? A. Five, ten days, whatever.

Q. And if merchandise arrives before it is scheduled to

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arrive, is there anything done? A. It is like storage, it is on the pier, there is demurrage.

Q. What is demurrage? A. They pay because it is too early or too late.

Q. Why do they make them pay for being too early or too late? A. They don't have the room for it.

Q. On the pier? A. On the pier.

Q. So that all the cargo that is received is scheduled to go aboard a ship within what amount of time from the moment it is received, as far as your experience? A. Ten days, five days, ten days, fifteen days.

Q. And does the same thing occur in unloading a vessel? A. Yes.

Q. That the cargo must be gotten off the pier within a certain number of days? A. Right.

Q. Or otherwise there is this demurrage penalty charge? A. Yes.

The Court: Off the record.

(Discussion off the record.)

The Court: Back on the record.

Q. Now, on March 12, 1973, did you meet with an accident working for Pittston Stevedoring Company? A. Yes, I did.

Q. On that particular day, what were you assigned to do? A. I was assigned to take cargo that had been received at the Columbia Street pier for the Philippine line. The Philippine line had moved over to Pier 12. We were assigned to start picking up the cargo to bring over to Pier 12 for the Philippine line which was tied up at Pier 12.

Q. In other words, so I get the picture correctly, that the Philippine lines had been located at the foot of Columbia Street? A. Yes.

Q. Therefore, cargo had been delivered there for that purpose to load it on those ship? A. Yes.

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Q. In the meantime, they moved to another pier? A. They moved out of there to Pier 12.

Q. Then you were assigned to— A. The dispatcher assigned us to take the cargo from the Columbia Street pier to bring it over to Pier 12 because it had to go on board that ship.

Q. How far is Pier 12 from Columbia Street? A. It is about 10 blocks.

Q. That whole area, how would you characterize it? What type of an area is it between Columbia Street— A. Waterfront. That is Buttermilk Channel, I believe they call it.

The Court: Where is that located?

The Witness: Right opposite Governor's Island.

Mr. Gucciardo: I have a diagram and I'll submit it, your Honor.

The Court: Is it New Jersey or Brooklyn?

Mr. Gucciardo: Brooklyn.

I think counsel will stipulate that the Pittston Stevedoring operates Pier 12 located Buttermilk Channel which is adjacent to navigable waters of the United States.

Will counsel stipulate that?

Mr. DiConstanzo: Yes.

The Court: Thank you.

Q. Then you were assigned to this task? A. Yes.

Q. You met with an accident? A. Yes.

Q. Where were you physically when the accident occurred? A. I was in the pier, on the pier.

Q. What pier number? A. Pier 12.

Q. In order to get into Pier 12, do you have to pass through a gate? A. Yes, you got to go through a gate with a gate guard.

Q. Who is the gate guard employed by? A. Pittston Stevedores.

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Q. Is Pier 12 entirely controlled, as far as you know, by the Pittston Stevedoring Company? A. Yes.

Q. And you went through this gate with what, what did you have? A. A tractor and a boogie. A tractor with—

Q. What was on the boogie? A. A container.

Q. Is this the same type of container that you described for us before that the cargo was loaded into? A. Yes.

Q. Then the entire container is put on board a vessel? A. Yes.

Q. You were taking that container there by means of a tractor and a boogie? A. Yes.

Q. For what specific purpose? A. They had to unload it to put the cargo on board that ship because all the cargo in that container wasn't for one consignee, so they had to split it up.

Q. So that the container had to be physically unloaded and then the unloaded merchandise— A. Put on the dock and put on board the ship.

Q. All right.

Was the ship there at the time, do you know? A. Yes, the ship was there.

Q. Do you know the name of the ship, by any chance? A. No, I really don't.

Q. Did you see any men working for Pittston Stevedoring on board the vessel? A. Yes, they were working the vessel.

To make a point, we had been working on this particular job for three days, we had worked it Thursday, Friday and we came back on Monday. We were bringing this cargo from the Columbia Street pier to this Pier 12.

As we were bringing it over from trucks that had been loaded, trailers, it was going right on board the ship.

Q. Let's get back to your accident. Yes.

Q. You now had entered Pier 12 through the gate maintained by Pittston? A. Yes.

Q. What did you do? A. I brought it up to the receiving dock.

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Q. Yes. A. They said to me if I wouldn't mind opening it up and back it into the platform that they had to unload it. That is like I say I opened the doors and they had this case, it must have been badly stowed, as I came back to walk around to get into the truck, the case came out. I never seen it. Someone pushed me out of the way. This is how I got hit by this case. It hit me on the head, shoulder and hip.

When I went down, it landed on my left foot.

Q. How heavy was this case? A. 410 pounds.

Q. Were you out of work from March until sometime in September?

Mr. DiConstanzo: Objection to the question, it has already been stipulated to.

The Court: I believe it has been stipulated to.

Mr. Gucciardo: Yes, your Honor, he is correct.

Q. Just to make the matter a little bit more clear, you said that you had unloaded it on a dock. What do you mean by a dock in this particular instance?

Are you using it in the same sense— A. A platform. The platform of the pier.

Q. And you say with your own eyes that this cargo that had been transferred for three days from Columbia Street to 12th Street was in the process of being loaded on a vessel? A. Pier 12. Yes, it was in the process of being loaded, right.

Q. I show you a schematic and it is labeled Brooklyn-Port Authority Marine Terminal, General Information Map, April 1st, 1969.

I ask you if this is a fair and reasonable representation of the waterfront area around Pier 12?

The Court: Have you seen this, Mr. DiConstanzo?

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Mr. DiConstanzo: No.

A. Yes, this is it, this is Pier 12 and the Columbia Street Pier should be over here.

Q. Will you take this ballpoint pen and circle Pier 12?

A. Yes.

(Witness indicating.)

The Court: The record will indicate that the witness has circled what counsel has described as Pier 12.

Q. Now, will you also show us in what part of Pier 12 you were, approximately, when the accident occurred? A. Right here (indicating).

The Court: The witness has made a mark upon the document.

A. Because the ship is tied up here and this is the front of the pier.

Q. Where is the gate; will you put the gate? A. The gate is here, it should be here (indicating).

Q. Will you put an arrow and put the wording?

Mr. Gucciardo: Can I do it, Mr. DiConstanzo, because the witness is not writing clearly enough.

The Court: Let Mr. DiConstanzo come forward.

Q. Point to where the gate is that is maintained. A. This is the gate right here.

Q. Right here? A. Yes.

Q. And is this entire property down to the pier enclosed? A. This is open. All this is open area. This is what they call farm area.

Q. I mean, is there a fence around the entire area? A. Yes, there is a fence here because the railroad runs through

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here and the fence runs down to here, to here (indicating). This is all open. This is the waterside.

Q. I'm going to put a little box here and I'm going to put an arrow there with site of accident.

Mr. Gucciardo: Is that all right, Mr. DiConstanzo?

Mr. DiConstanzo: Yes.

The Court: Counsel for the respondent has indicated that he has no objection.

Q. In a general way, could you mark for us with your own hand approximately where the gates or the enclosure for the entire area controlled by Pittston Stevedoring is?

A. It goes down through here. This is a garage here (indicating). The gate goes this way (indicating).

Q. The garage that you mentioned, is that maintained by Pittston, too? A. No, this is an outside garage. The gate runs like—there is a railroad that runs through here and the gate is like here, and then it goes in.

Q. I see. A. Because of the railroad. It goes like a "V".

Q. The garage that you mentioned is outside of the Pittston area. A. That is not our garage.

Q. So the gate runs just alongside of the garage; is that it? A. Yes, from this here (indicating).

Q. Not the gate, the fencing. A. The fence. That is a railroad yard in there.

Q. Is the railroad outside or inside the Pittston area? A. Outside.

The Court: Mr. Gucciardo, I would like to inquire of your proponent, did you see this area before?

Mr. DiConstanzo: Yes.

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The Court: Is it accurate what has been described?

Mr. DiConstanzo: Approximate. No issue on it.

Q. Does this diagram show where Columbia Street is?

A. I don't think so.

Q. I show you this additional Marine Terminal's General Information Map, I don't see a date on it.

The Court: Mr. Gucciardo, do you intend to mark these documents?

Mr. Gucciardo: Yes.

The Court: Let me mark them, please.

Mr. Gucciardo: I offer the first one in evidence at this time, if you want to accept it, your Honor.

The Court: Let's mark this Claimant's Exhibit 1 for identification.

(Whereupon the document referred to was marked Claimant's Exhibit No. 1 for identification.)

The Court: We will mark the other one Claimant's Exhibit 2 for identification.

(Whereupon the document referred to was marked Claimant's Exhibit No. 2 for identification.)

Q. Does this Claimant's Exhibit 2 reasonably represent the Columbia Street Pier maintained by the Pittston Stevedoring Company at the foot of Columbia Street? A. Yes, this is the pier. Pier 12 is over here (indicating).

Mr. Gucciardo: Will you have the record indicate when he says Pier 12 is over here, he is pointing to the extreme upper left-hand corner of the map.

Q. Actually Pier 12 is not on this No. 2 exhibit, is it?

A. No, because it goes into Walcott Street. They only got

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Van Dyke. It has one more block to go over. You can go like down this end, because this is Van Brunt and then it is Conover and then Ferris and then Pier 12 lays right in here.

Q. Let's get back to No. 1.

How many ships can be accommodated at Pier No. 12 at one time? A. One, two, three, four.

Q. And is there water on three sides of that pier? A. Right, three sides.

Mr. Gucciardo: I offer them both in evidence.

The Court: Do you have any objection, Mr. DiConstanzo?

Mr. DiConstanzo: No.

The Court: They will be received as Claimant's Exhibits 1 and 2 in evidence.

(Claimant's Exhibits Nos. 1 and 2 for identification, were received in evidence.)

Mr. Gucciardo: Just one further question if you're ready, your Honor.

The Court: Not quite ready.

Q. Now, how many years have you worked for Pittston Stevedoring Company? A. Twenty-five years.

Q. In all of the 25 years that you have worked for Pittston Stevedoring, have you done any other duties other than the duties that you have described previously in the loading and unloading of vessels as a driver?

Mr. DiConstanzo: I'll object to the question, it is irrelevant what this man did 20, 25 years ago; we are concerned with what he was doing this particular day, or around that particular time.

Mr. Gucciardo: Your Honor—

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The Court: You may be heard on that.

Mr. Gucciardo: I'm asking him in the entire 25 years including this particular time, and I'm also trying to maintain a record to show that we are not restricted to the narrow activity that the man was doing at the time of the accident, we have to show an overall picture.

Mr. DiConstanzo: I didn't say the time of the accident. I said a reasonable time prior thereto.

I feel that 25 years is most unreasonable.

The Court: I understand both points that you're making, gentlemen, I do, and as I said, it is my policy to let you make a record to support that.

I'm not saying that I agree with you, or you, Mr. DiConstanzo. But I would like the record to be clear as to what your points are and have it documented.

What was the question?

Q. In all of the 25 years that you have worked for Pittston Stevedoring Company, have you done any other work for them other than in connection with the loading and unloading of vessels in the driving capacity that you have mentioned?

The Court: With the understanding that what the witness describes as loading and unloading does not bind me insofar as my ruling.

Mr. Gucciardo: Yes.

The Court: You may ask the question.

Q. You may answer. A. I worked for them as a dispatcher right after I got hurt. Other than that, all I ever done was load, unload, go from terminal to terminal, taking pallets, bringing cargo from one area to another. All pertaining to ships loading and unloading.

Q. When you say you worked for them as a dispatcher,

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is that the same dispatcher that gave you the instructions as to where to go? A. Yes, he was out sick.

No, he wasn't out sick then. When I came back after my injury, they put me in the office for awhile. I went dispatching.

Now I'm back out on the street. Other than that, that is all I have done, more cargo, freight, gear, pertaining to loading and unloading of ships.

Mr. Gucciardo: Thank you.

No further questions.

The Court: Let's take just a brief five minute recess and then you may cross examine.

(Recess taken.)

The Court: We can proceed whenever you're ready.

CROSS EXAMINATION

Q. (By Mr. DiConstanzo) Do you know a John D'Alessandro? A. Yes.

Q. Who is he? A. A dispatcher.

Q. He is the one who gives you orders and tells you what to do? A. Yes.

Q. Now, sir, for the year prior to the accident, did you work for anyone else other than Pittston? A. No.

Q. When was the last time that you worked for another stevedore outside of Pittston prior to your accident? A. I haven't worked for any other stevedore in the 25 years that I can remember. Prior to that I did.

Q. You have steady work? A. Yes.

Q. Do you have to shape? A. No, I don't shape. I get orders the night before.

Q. Now, sir, can you tell us the distance from one pier to the other, that is, from Pier 12 to the State Pier? A. Ten blocks, a mile and a half; a mile, mile and a half, whatever.

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Q. In coming out of the State Pier, you would come out the gate, you would go on to public streets? A. Yes.

Q. How many public streets would you travel before you came to Pier 12? A. About eight or nine, like that.

Q. I show you this diagram and ask you, sir, if this fairly represents generally the location of the State Pier and Pier 12 showing Columbia Street? A. Yes.

Q. And Walcott Street? A. Yes, this is how you travel. This is how you travel over to Pier 12.

Mr. DiConstanzo: May I mark this and offer it, sir?

The Court: You may mark it for identification now as Respondent's Exhibit 1, and then I would like to have Mr. Gucciardo speak to it.

Mark it Respondent's Exhibit 1 for identification.

(Whereupon the document referred to was marked Respondent's Exhibit No. 1 for identification.)

Mr. Gucciardo: May I be heard?

The Court: Yes.

Mr. Gucciardo: With the understanding that it is only intended to show the area way between both piers and doesn't show the character of the general area as I have shown on my exhibit, namely that is waterfront area.

Mr. DiConstanzo: Certainly.

This is solely introduced for the purpose of being used in conjunction with the other two diagrams to show the relative location and distances.

The Court: It will be received in evidence as Respondent's Exhibit 1.

(Respondent's Exhibit No. 1 for identification, was received in evidence.)

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Mr. Gucciardo: I don't remember you saying that my both exhibits were received in evidence.

The Court: If the record doesn't reflect that Claimant's Exhibits are received in evidence, they are received in evidence.

Q. Mr. Scaffiddi, I show you four photographs and ask you whether or not they fairly represent State Pier— A. This is the Columbia Street Pier.

Q. With the loading platform? A. Yes.

Q. The four of them? A. Yes.

Mr. Gucciardo: Which pier did you say this is?

The Witness: Columbia Street Pier.

Mr. DiConstanzo: He calls it Columbia Street Pier, I call it the State Pier.

May I offer it in evidence?

The Court: Is there any objection?

Mr. Gucciardo: No.

The Court: There is four pictures on the one page.

It will be marked Respondent's Exhibit 2 in evidence.

(Whereupon the documents referred to were marked Respondent's Exhibit No. 2 and were received in evidence.)

Mr. Gucciardo: We will stipulate for the record, your Honor, that this pier is commonly known as the State Pier and also the Columbia Street Pier.

The Court: Thank you for that clarification.

Q. Sir, showing you Respondent's Exhibit No. 2 in evidence, does this show the loading platform at the State Street Pier? A. Yes.

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Q. Will you indicate it, please? A. The loading platform?

Q. Yes. A. This is the loading platform (indicating).

These are the loading platforms right here in the pictures.

Q. There is an arrow on the photograph, the left-hand upper photograph. Does the arrow point to the loading platform? A. Yes.

Q. And likewise to the lower left-hand photograph, does the arrow point to the loading platform? A. Yes.

Q. Now, on this photograph, the upper right-hand photograph, does it also show the loading platform? A. Yes.

Q. Will you put an arrow there, sir? A. Yes.

(Witness indicating.)

The Court: The photograph has been so marked.
Off the record.

(Discussion off the record.)

The Court: On the record.

Mr. DiConstanzo: I offer in evidence four photographs representing Pier 12.

The Court: Any objection?

Mr. Gucciardo: No objection.

The Court: We will receive those in evidence as Respondent's Exhibit 3.

(Whereupon the documents referred to were marked Respondent's Exhibit No. 3 and were received in evidence.)

Mr. DiConstanzo: I offer in evidence, with the consent of my adversary, four photographs, again representing Pier 12 and ask that it be marked as Respondent's Exhibit 4.

The Court: The document will be received as one exhibit, Respondent's Exhibit 4.

Mr. Gucciardo: No objection, but will you show it to the witness after he marks it.

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The Court: Received in evidence.

(Whereupon the documents referred to were marked Respondent's Exhibit No. 4 and were received in evidence.)

Q. Mr. Scaffiddi, I show you these four photographs marked Respondent's Exhibit 4 and ask you whether or not they fairly represent Pier 12? A. Yes.

Q. Now, we have been talking about Pier 12, sir. You don't mean just a shed; when we say Pier 12, we mean the farm area and the shed; is that correct, sir? A. Yes.

Q. Now, these four photographs on Exhibit 4, they show the farm area and the loading platform; is that correct, sir? A. Right.

Q. Now, can you indicate on one of these four photographs, if you can, where your truck was at the time of your accident? A. I was pulled up to here when the man told me to open the door.

Q. Is that where the arrow is? A. Right about here. Right up to the platform. I was near the platform.

Mr. Gucciardo: Have the record indicate that he is indicating the upper left-hand picture on the sheet.

A. I was parked here. He asked me to open, stop—

Q. I didn't ask you that.

Will you put an "X" where your truck was? A. Yes.

(Witness indicating.)

Q. Thank you, sir.

The Court: The witness has so marked.

Q. Now, sir, what time of the day did you meet with your accident? A. About 8:30 in the morning.

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Q. Had you made any trips? A. That was my first trip.

Q. Now, sir,—

Mr. Gucciardo: I think we better have that clarified. First trip for that day?

A. For that morning.

Q. You started 8:00 o'clock? A. No, we started 7:00 o'clock.

Q. You started 7:00 o'clock? A. Yes.

Q. 7:00 o'clock you reported to State Pier? A. Right.

Q. Did you have anything to do with the loading of that container? A. Not that one, no. I was told to hook into it and take it over.

Q. When you say not that one, is it your job also to stuff containers? A. And load them, yes, if necessary.

Q. When was the last time that you stuffed a container before your accident? A. I loaded a truck the day before to go from State Pier to Pier 12, a 40 foot flat. We were using everything to bring containers and trailers to bring the cargo over to Pier 12.

The Court: Has the witness answered your question?

Mr. DiConstanzo: Sir?

The Court: Has the witness answered your question?

Mr. DiConstanzo: Yes.

The Court: Wasn't the question when was the last time you loaded a container?

Mr. DiConstanzo: No, stuffed a container.

The Court: Stuffed it?

Mr. DiConstanzo: Stuffed it means putting cargo into it.

The Court: Yes.

Has the witness responded to that question?

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The Witness: That particular day, your Honor, we were using 40 foot open flats, containers, and I was driving a tractor. Also I was loading the open truck. The containers they had backed into that platform, that they showed at the Columbia Street, that they were loading and I was dropping one over at the 12th Street Pier, at Pier 12, and then going back to deadhead them, as we would call it, to pick up that container to bring that back over to the pier. Then pick up the empty and come back.

This way we were on a steady move back and forth.

The Court: Thank you.

Mr. Gucciardo: Will counsel stipulate that stuffing and loading a container are interchangeable terminology?

Mr. DiConstanzo: Yes.

The Court: Thank you.

Q. I didn't comprehend essentially what your duties were. You usually drive a truck? A. I'm a longshoreman. I do whatever they want me to do. I'm terminal labor and driver so I drive a fork-lift, I drive a truck, whatever they want me to do.

Q. When was the last time you were on board a ship?

A. The last time?

Q. Yes. A. I went down, I was in Amboy and I went up to get a superintendent off a ship. I had to get some orders. He had to call someone. That was three, four years ago.

Q. Sir, you made a statement that the cargo in the container involved in the accident was to be then and there placed on board a ship; is that what you said? A. I was bringing cargo to the pier to be loaded aboard the ship.

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Q. But you said loaded aboard a ship that day? A. They were loading for three days.

Q. I didn't ask you that.

Mr. Gucciardo: Just a minute, your Honor.

I think we were engaged in semantics with this witness and it isn't fair. What he considers loading a vessel—

Mr. DiConstanzo: Please, Mr. Gucciardo, I object.

Mr. Gucciardo: I object to your questioning on the grounds that it is ambiguous.

The Court: Will you restate the question, Mr. DiConstanzo.

Mr. DiConstanzo: Mr. Stenographer, will you please repeat the question?

Mr. Gucciardo: Restate the question, Mr. DiConstanzo.

Q. Sir, you stated that the cargo that you were delivering in the container involved in your accident, was to be placed on board a ship then and there at the pier; did you say that? A. That is the way I was told, yes.

Q. Did you see it go on board the ship that particular day? A. I got knocked out that morning, I didn't see anything. I got taken to the hospital.

Q. Who told you that? A. The dispatcher. That is why this cargo had to be moved from Columbia Street to Pier 12.

Q. The day before, what did you do? A. I was home, it was the weekend.

Q. The prior working day, what did you do? A. Moved cargo from Columbia Street Pier, which was a Friday, to Pier 12.

Q. For how many days, sir, were you engaged in transshipping cargo from one pier to the other by reason of the

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change of location of the line? A. Two days. Monday was the third day.

Q. Now, how many days a week would you say that you use a trailer truck in the course of your work? A. Five days a week.

Q. What? A. Five days a week.

Q. And is it part of your duty to transfer Hi-Los from one pier to another? A. Yes.

Q. And how do you do that? A. By a tractor trailer, by a flat-bed.

Q. Is it also part of your duties to transfer gear? A. Yes.

Q. And, of course, by gear we are talking about hooks, steel cables, pallets? A. Yes.

Q. Now, when you arrived at Pier 12 and you opened the door, was there anyone there to help you? A. Yes, there was a man helping me open the doors, right.

Q. Then if the accident had not occurred, you would have backed into the platform? A. Right.

Q. And a Hi-Lo would have come out and picked up the container? A. A Hi-Lo would have unloaded the container. I was to drop the container on the boggie at that platform door.

Q. You had nothing to do with the physical taking out of the cargo out of the container and bringing it into the pier? A. No. Right then and there, no.

Q. Now, you said that often times you drive a fork-lift truck. When was the last time you drove a fork-lift truck prior to this accident?? A. I drive one everyday in the course of loading and unloading the trucks and whatever we do.

Q. Aren't you classified as working for the maintenance department? A. No, I belong to the ILA, it is not the maintenance.

Q. I didn't ask you what union you belonged to. A. You said maintenance department.

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Q. Of Pittston. A. Yes, I work out of there.

Q. You work out of the maintenance department, you don't work out of the longshore department, do you?

Mr. Gucciardo: Objection, your Honor.

Mr. DiConstanzo: If he knows.

Mr. Gucciardo: It is all longshore. I'm not aware—

Mr. DiConstanzo: Again, will you stop making statements.

Mr. Gucciardo: I'll object on the grounds that it has not been established that there is a longshore department with Pittston.

The Court: That hasn't been established. The witness can respond, if he knows.

Q. Sir, the work on the waterfront, particularly at Pittston's terminal, and let's take Pier 12 and the State Street Pier, we have what we call gangs, right? A. Right.

Q. And those gangs are attached to the ship, is that correct? A. Yes, you have gangs attached to the ship, yes.

Q. Are you familiar with the number of men in a gang? A. Yes, it would be 20 men to a gang.

Q. And of those 20 men, how many men would you say are on the ship? A. Twelve.

Q. How about the other eight? A. On the dock.

Q. And some of the men on the dock that belong to the gang operate Hi-Los? A. Yes.

Q. And they take the cargo from the point of rest that the cargo hook drops it on to the dock? A. Yes.

Q. Where do they take it to? A. When it comes off, or when it goes on?

Q. When it comes off. A. Take it into the pier area.

Q. Do they bring it out into the loading platform? A. If someone is out there waiting for it, yes.

Q. Generally speaking. A. Wherever it has got to go,

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down the dock or like I said, if there is anyone out there waiting for it.

Q. Now you have another group of men who are classified as extra labor? A. Yes.

Q. What do they do? A. They do whatever they are told to do, whatever they have to do.

Q. Isn't it primarily their principal duty to take the cargo from the place that the Hi-Lo driver attached it to the vessel, deposits it, and bring it either to the loading platform or to a staging area where the cargo is kept until the trucks come to pick it up? A. Right.

Q. You have no direct knowledge as to whether the cargo contained in the container causing your injury as to whether or not it was to be loaded that day or at any time subsequent thereto? A. The only thing we were told to move that cargo from there because the ship was tied up at 12th and this was the cargo received at Columbia Street Pier for that vessel. The line moved to Pier 12.

All the cargo we moved in the days previous was for that vessel.

Q. Outside of someone telling you, you don't know of your own knowledge?

Mr. Gucciardo: Objection, your Honor, I think he answered the question.

The Court: I think he has so indicated, but he may respond again.

A. No, this is—like I said before, this is why we were moving it, the ship was at Pier 12 and we were moving the cargo to be loaded at Pier 12.

Q. How do you know that? A. The dispatcher said we had to get on that job and get it done in a hurry.

Q. You didn't visually see this cargo being loaded? A. Yes, when I was bringing it inside, I seen them unloading my truck. In fact, I helped them unload it because I needed

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the flat-bed to go back and get another load and put it on the dock that they were putting it on the ship on the Thursday and Friday.

Q. We are talking now on the day of your accident. A. On the day of the accident, like I told you, it happened in the morning. That was the first trip, and I don't know what transpired after that, because I was laying in Long Island College.

Q. Sir, do you know of your own knowledge as to what type of cargo was in the particular container responsible for your injuries? A. No. All I know is cases and cartons. Whatever was in there. That is all I know.

Mr. DiConstanzo: That is all, sir, thank you.
The Court: Mr. Gucciardo?

REDIRECT EXAMINATION

Q. (By Mr. Gucciardo) Is that what is known as general cargo? A. Yes.

Q. Now, in Respondent's Exhibits No. 2, 3 and 4, the photos especially, are all of those photos within the Pier 12 area maintained by Pittston Stevedoring Company? A. As far as I know, yes.

Mr. DiConstanzo: There is no issue that this accident did not occur within the confines of our terminal, no issue.

The Court: I understand that there is no issue in that respect.

Is that correct?

Mr. Gucciardo: I just wanted to get it clear that it is within their area.

I didn't understand otherwise the purpose for introducing those photos.

Mr. DiConstanzo: Off the record?

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The Court: Off the record.

(Discussion off the record.)

The Court: On the record.

Q. Now, whenever you work as a driver and you transfer Hi-Los and gear and other equipment, what are these Hi-Los and gear and other equipment used for? A. They are for loading and unloading ships and extra labor and the likes.

Q. And the gear that you were referring to are those hooks that are put at the end of falls? A. Yes.

Q. Which comes from the ship's booms? A. That is right.

Q. And there is many different types of hooks that have to be used in loading and unloading a vessel depending on the cargo to be loaded; is that correct? A. That is right.

Q. Do the gangs, as described by Mr. DiConstanzo in his cross examination load and unload lighters? A. Yes, if they are working alongside of a ship, they are in a lighter. They work offshore. They would be working in a lighter.

Q. The gang, as a unit, do they go aboard the lighter and discharge it or load it? A. Not the whole gang.

Q. Who does that normally? A. Extra labor or the dock gang.

Q. That is the classification you are? A. Yes.

Q. Whether you are extra labor, or whether you're a gang working on a ship, isn't that all under the general classification of longshoreman? A. Yes.

Q. But there are various subdivisions under the longshoremen depending on the work you do like extra labor; incidentally, is that also known as terminal labor? A. That is right.

Q. And you said you worked with fork-lifts, Hi-Los? A. Yes.

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Q. Do you, on occasion, take the Hi-Lo and pick up the cargo that is directly dropped from the ship on the string piece to the staging area for distribution to the consignees?

A. Well, that would be like when they need a driver for the container, they would land the container on the truck and you would take it out to the farm area. You would be working assigned to the ship.

Q. Do you do that? A. I have done that, yes. I've done it in the course of my job.

Mr. Gucciardo: Nothing further.

The Court: Do you have anything further, Mr. DiConstanzo?

Mr. DiConstanzo: No.

The Court: The witness may stand down, thank you for appearing.

(Witness excused.)

Mr. Gucciardo: I have no further witnesses, your Honor.

The Court: Do you rest your case then?

Mr. Gucciardo: Yes.

The Court: Mr. DiConstanzo, do you have anything further?

Mr. DiConstanzo: Yes, Mr. D'Alessandro.

JOHN D'ALESSANDRO

a witness herein, having been first duly sworn by the Reporter, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. DiConstanzo) Mr. D'Alessandro, by whom are you employed? A. Pittston Stevedores.

Q. And for how long have you been in the employ of Pittston Stevedore? A. Roughly 30 years.

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Q. And in what capacity do you serve? A. Well—

Q. At the present time. A. At the present time dispatcher.

Q. Dispatcher? A. Yes. I take care of all the moves.

Q. How long have you been a dispatcher for Pittston?

A. About seven years.

Q. What are the duties of a dispatcher, your duties? A. To assign the work to the truck drivers and the maintenance men in the garage.

Q. Did you have the claimant, Mr. Scaffiddi, in your employment on March 12, 1973? A. Yes, he was.

Q. What capacity? A. He was a truck driver at the time.

Q. And for how long had he been working for you? A. He has been working for us for 18 years, that I know of, maybe longer.

Q. During the two or three years prior to his accident, what were his duties? A. The same.

Q. What was that? A. The same duties.

Q. What was that? A. Driving a truck, moving equipment, moving cargo.

Q. Now, when you say moving equipment and moving cargo, what do you mean by that? A. Well, we do transport a lot of equipment, move them around from one location to another such as Hi-Los, cranes, gear, anything pertaining to ships.

Q. Was that essentially his duties? A. Most of it, yes.

Q. Was he—

Mr. DiConstanzo: Strike that.

Q. During a year prior to his accident, would you say anytime he was assigned to a single pier? A. No, he was under my jurisdiction, taking orders from the garage.

Q. Now, there came a time when the Philippine line, I understand, transferred its operations from the State Pier to Pier 12; do you remember that? A. That is correct.

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Q. You found yourself with some cargo at the State Street Pier that had to go on ships that were coming in, or were in at the Pier 12? A. The Pier 12 area, right.

Q. What did you do? A. I assigned John Scaffiddi to move the cargo from State Pier to Pier 12.

Q. Do you remember how many days that took? A. About two or three days, I don't remember the exact amount of time.

Q. Now, when you say you assigned John Scaffiddi to move the cargo, what did you exactly mean? What were his duties with reference to moving the cargo? A. Picking up the cargo from State Pier and deliver it to Pier 12.

Q. Would he himself physically put the cargo on his truck? A. If it was an open truck, yes. If it was a closed truck, no, they were already loaded.

Q. I see. He doesn't have to shape, does he? A. No.

Q. He is a steady employee at that pier? A. Steady employee with Pittston more or less.

Q. Does he usually work five days a week? A. He never takes no time off.

Q. Now, how many more men complement your department? A. The maintenance department?

Q. Yes. A. About 30, 30 men.

Q. Generally what are their duties?

Mr. Gucciardo: Objection, your Honor, it is immaterial to the issues here what the other men in the department do.

The Court: I'll let him develop his case.

Mr. DiConstanzo: I'll withdraw the question.

Q. Out of the 30 men at the time of the accident of Mr. Scaffiddi, how many other truck drivers did you employ? A. There was two of them that I know of at that time. Two drivers.

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Q. Mr. Scafiddi and another? A. Yes. But there was some outside drivers, too.

Q. In other words, when you found it necessary to hire other men, you hired outside men? A. Yes.

Q. Would it be a fair thing to say that Mr. Scafiddi and this other person, were the steady drivers? A. Yes, they were the steady drivers.

Mr. DiConstanzo: That is all, sir.
The Court: Cross examine.

CROSS EXAMINATION

Q. (By Mr. Gucciardo) Mr. D'Alessandro, are the maintenance members of a union? A. Yes.

Q. What union is that? A. 1277.

Q. What is the name of it? A. International Longshoreman's Association.

Q. The same union that Mr. Scafiddi belongs to? A. It is affiliated.

Q. A different local? A. A different local.

Q. And all of the maintenance men that Mr. DiConstanzo referred to in his direct examination, are these men all engaged in activities which are incidental to and necessary part of the loading and unloading of vessels? A. Yes.

Q. As a driver, is Mr. Scafiddi required to operate Hi-Los? A. Yes.

Q. Stackers? A. Yes.

Q. Bogies, attach bogies to tractors? A. Yes.

Q. And hustlers? A. Yes, he is.

Q. You were present and sitting in the courtroom during most of Mr. Scafiddi's testimony? A. Yes, I was.

Q. Would you say that the activities that he described as doing while working for Pittston Stevedoring fairly

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and reasonably describes the activities that is expected of him? A. Those are the activities that are expected of him.

Mr. Gucciardo: No further questions.

REDIRECT EXAMINATION

Q. (By Mr. DiConstanzo) What local did you say you belong to? A. 1277-1.

Q. Is there any reason why you don't belong to 1814? A. That is a maintenance local.

Q. Sir? A. That is a maintenance local affiliated with the International Longshoreman's Association.

Q. Is it a correct statement that 1814 is a longshoreman's local? A. Yes.

Q. Please tell us what Local 1277 is? A. Strictly a maintenance local.

Mr. DiConstanzo: No further questions.

RECROSS EXAMINATION

Q. (By Mr. Gucciardo) There is a checker's local, is there not? A. Yes.

Q. And the checker's— A. That is a different number also.

Q. The checkers work right alongside of the longshoreman who are—

Mr. DiConstanzo: I'll object.

Mr. Gucciardo: You opened it.

Mr. DiConstanzo: I'll object to interjecting checkers, because they are covered under the Act.

Mr. Gucciardo: That is my point.

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It is a very important point now. He is conceding they are covered under the Act.

Mr. DiConstanzo: Who?

Mr. Gucciardo: The checkers are.

Mr. DiConstanzo: The Act specifically says so.

Mr. Gucciardo: Good.

The Court: What point are you making?

Mr. Gucciardo: I'll make it in one minute by my next question.

The Court: Go ahead.

Q. Is the checker working right alongside of Mr. Scaffiddi when he loads and unloads these vehicles?

Mr. DiConstanzo: I'll object to the question as being incompetent, immaterial and irrelevant as to what the checker does.

The Court: An area of general knowledge.

You may answer the question.

A. The checker has to be there.

Q. And that is on the land, is it not? A. Yes.

Mr. Gucciardo: Thank you.

The Court: Does anyone have any further questions of the witness?

Mr. Gucciardo: No.

Mr. DiConstanzo: No.

The Court: Thank you for appearing, you may stand down.

(Witness excused.)

The Court: Do you have any further witnesses?

Mr. DiConstanzo: Yes.

The Court: Come forward and be sworn, please.

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EDWARD BUDERWITZ, a witness herein, having been first duly sworn by the Reporter, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. DiConstanzo) Mr. Buderwitz, by whom are you employed, sir? A. Pittston Stevedoring Corporation.

Q. In what capacity, sir? A. I'm the insurance manager.

Q. Is it part of your duty to investigate accidents? A. Yes, sir.

Q. And at my request, did you conduct a search of the records kept in the regular course of business of Pittston? A. Yes.

Q. In order to establish and to trace the cargo in the container involved in this accident? A. Yes, sir.

Q. Can you tell us, sir, the cargo in this container involved in the accident? A. No, sir, I can't. I cannot specifically identify the cargo by its numbers or marks.

Q. On the date of the accident, can you tell us what ships were at Pier 12? A. Yes, sir.

Mr. Gucciardo: Objection, your Honor. He hasn't established that he was at Pier 12 or knew what ships were at Pier 12.

Q. Now, Pittston Stevedoring keeps records of when ships arrive, when they leave, when they are unloaded; is that correct? A. Yes.

Q. Did you look at these records and based upon your having looked at these records, which incidentally are they kept in the regular course of business? A. Yes.

Q. After having looked at these records, are you able to tell us the ships that were at Pier 12 on the day of the accident?

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Mr. Gucciardo: Objection, your Honor. This witness is not competent to answer the question because it hasn't been established that he keeps those records, or it is within his province to keep those records.

The Court: Have you examined the records of the Pittston Company?

The Witness: Yes.

The Court: Do you keep them yourself?

The Witness: They are kept in our office, yes.

The Court: He is closely enough associated with that. I'll let him answer the question.

He examined the company's records and he can testify as to what the company's records reflect. Otherwise we will be bringing people in from the company.

Mr. Gucciardo: I have no doubt that they are kept in the regular course of business, your Honor. I maintain this gentleman is in the insurance department and he doesn't maintain these records, is not competent to testify on records that are maintained by someone else.

The Court: That may be true.

If he examined the records, I'll let him testify as to what information he obtained from examining the records.

Otherwise we would be bringing in people keeping the records. I think Pittston is well enough established—

Mr. DiConstanzo: I can put in voluminous documents to establish what vessels were there that day.

Mr. Gucciardo: He overruled me, continue.

The Court: It is an administrative proceeding. I have the belief within me that the records are kept in the normal course of business and he examined them and I'll let him testify as to what information he obtained.

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Q. Can you tell us what ships were at Pier 12 on the date of the accident? A. Yes, sir, we had two ships.

Q. Do you have a record indicating that? A. Yes, sir. We had the Philippine President Garcia and also the Jalakirte.

Q. When had those vessels arrived, sir, and when did they leave? A. The Philippine President Garcia arrived on March 9, 1973.

Q. When did it leave? A. The Philippine President Garcia sailed on the 13th of March, 1973.

Q. How about the other ship? A. The other ship was still there on the 12th and 13th. On the 12th of March it was idle, it was not working.

Q. Now, how could you tell that on March 12th it was idle? A. There was no activity for it.

Q. Do you have that record with you? A. No, sir, I don't.

Q. Do they keep—

Mr. Gucciardo: I'm going to object and move that it be stricken from the record.

The Court: Well, I'll leave it in. I, of course, will assign appropriate weight.

I'll let him make that statement.

I understand that point, you do not have the backup on this, but I'll let him state his beliefs.

Mr. DiConstanzo: I respectfully request an opportunity to present it.

Mr. Gucciardo: He overruled my objection, Mr. DiConstanzo. There is no point in making that request.

The Court: I will let counsel make his record on this.

I would not be unreceptive to receiving that follow the hearing if you can mail it in, and we can have it incorporated into the record.

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Q. Everyday whenever ship is worked on, there is kept an activity sheet; is that correct, sir? A. Yes, sir.

Q. Everyday whenever ship is worked on, there is kept an activity sheet; is that correct, sir? A. Yes, sir.

Q. And that activity sheet would indicate how many gangs, what hatches, what they were doing; is that correct? A. Yes, sir.

Q. Do you have those activity sheets for both those sheets? A. I have them for the Philippine President Garcia.

Q. Will you show it to us, please? A. Yes.

Mr. DiConstanzo: May I have them marked, please?

The Court: Yes.

Mr. DiConstanzo: As one exhibit?

The Court: One exhibit?

Mr. Gucciardo: You better make it two.

Mr. DiConstanzo: Yes.

The Court: Will you mark those Respondent's Exhibits 5A and 5B for identification.

(Whereupon the documents referred to were marked Respondent's Exhibits 5A and 5B for identification.)

Q. Will you please tell us, sir, by looking at Respondent's Exhibit A & B as to what activity was going on on the Philippine President Garcia on March 12, 1972; will you please tell us how many gangs were working on the ship, what were they doing, and what hatch they were working at? A. Yes, sir.

There were two gangs working the number 2 and number 5 hatches on the Philippine President Garcia, and there was one gang assigned to the number 3 aft hatch from 1:00 o'clock in the afternoon until 6:00 o'clock loading.

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Q. You didn't tell us what the first set of gangs was doing. A. They were discharging.

I'm sorry, there were two gangs assigned to the number 2 hatch and the number 5 hatch, discharging cargo.

Q. From what hour to what hour? A. From 8:00 o'clock in the morning until 5:00 at night.

Q. Then you told us that there was a gang loading from when to when? A. 1:00 o'clock in the afternoon until 6:00 o'clock in the afternoon at the number 3 hatch.

Q. Can you tell us the cargo that was being loaded? A. Yes, sir.

Q. Loaded that afternoon. A. Yes.

Q. What was it? A. Paper bags of chemicals.

Q. Any cases or cartons? A. No, sir.

Q. How many years have you been on the waterfront? A. Approximately seven.

Q. Are you familiar with the standard method of operating, conducting stevedoring operations in the Port of New York? A. Yes.

Q. Now, with reference to workers that load and discharge ships, are they separated into different classifications?

On your records, do you keep them under separate classification? A. Yes.

Q. Where are those classifications, sir? A. Well, we indicate when we hire gangs for loading and discharging of ships.

Q. That is correct.

Now, you say you hire gangs. What do you mean by that? A. We hire a working unit of men which consists of approximately 20 men which makes up a gang to work a specific ship.

Q. And what is the respective duties of the members of that gang? A. To either load or discharge that vessel.

Q. Do you have a group of men in the hold? A. Yes.

Q. How many? A. Eight men in the hold.

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Q. And you may have three or four deckmen? A. Yes, four deckmen.

Q. And the balance are on the dock? A. Yes, sir.

Q. And the balance that are on the dock, what are their specific duties? A. Well, in a discharging operation they will unhook the cargo from the ship's gear and bring it to a place of rest inside the pier area.

Q. Now, how would they transport that cargo to the point of rest to another point on the pier? Would they do it with Hi-Los? A. If it is palletized cargo, they would do it with Hi-Los.

Q. Now, you also have men classified as terminal or extra labor. A. Yes.

Q. What are their respective duties? A. Their primary functions are to receive cargo from truckers, deliver cargo to truckers, move cargo around the terminal area to facilitate loading or discharging from trucks.

From time to time they will load a lighter or discharge a lighter.

It is normal in the stevedoring business to classify a lighter or a railroad car with a truck.

Q. Can you, sir, ask an extra labor worker to go down into the hold? A. No, sir.

Q. If he would refuse to go into the hold, would he be subjected to a demerit? A. No, sir.

Q. What is a demerit now? A. Well, a demerit is if a man is ordered and doesn't work.

Q. What is a demerit, who does it and what does it consist of? A. It is—

Q. Is it a fair statement that the New York Shipping Association that controls the guaranteed annual income and the vacation has certain basic requirements?

Mr. Gucciardo: Rather than put Mr. DiConstanzo in a position of testifying for his own witness, I'll concede it.

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The Court: Thank you.

It hasn't been brought out in the record so far as I'm aware what this witness' background is.

He said he was employed by the insurance department, but evidently he has a more general knowledge than merely being an insurance accident investigator.

Can we establish his background in the company, please?

Mr. DiConstanzo: Yes.

The Witness: From 1964 to 1968, I was employed by a Certified Public Accounting firm and my account was Pittston Stevedoring Corporation.

In 1968, I was hired by Pittston as their controller. I was controller from 1968 to approximately February of 1971.

In approximately February of 1971, I took over the entire insurance department for Pittston as what you might term insurance risk manager, responsible for all phases of insurance and accidents, loss claims, damage claims, et cetera.

The Court: Do you have any knowledge of what goes on outside of the office work of Pittston, what goes on in the docks and terminal areas?

The Witness: Yes, sir, I have been down to each and every one of those piers quite frequently.

The Court: Thank you.

Q. Is it a fair statement—

Mr. Gucciardo: We will stipulate it, don't ask him.

The Court: What was that last stipulation?

Mr. Gucciardo: I will stipulate it, you state it.

Mr. DiConstanzo: A demerit is a penalty imposed by the New York Shipping Association against an

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employee who refuses to undertake work that he has assigned to him; or fails to report to work; or fails to what they call, badge in, come into the hiring hall looking for work.

Mr. Gucciardo: That is correct.

If you get, I believe, more than three of these penalties, you lose your guaranteed wages for the year which is \$16,000 under the new contract. So it is quite substantial.

The Court: I would imagine so.

Mr. DiConstanzo: I have no further questions.

The Court: You may proceed, Mr. Gucciardo.

CROSS EXAMINATION

Q. (By Mr. Gucciardo) Would it be fair to say that your job with this company is primarily in the clerical nature, that is what you described in the CPA, controller and in the insurance department? A. No, sir.

Q. How would you characterize it? Would you characterize it as manual labor? A. No. I was responsible for many of the systems that Pittston presently have. I instituted many of those systems. I have spent many, many months down at each and every pier.

Q. Let me interrupt you. A. I also—

Q. Let me interrupt you, please.

I basically want to establish what you do and where you do it.

Would you classify yourself as a white collar worker? A. Yes, sir.

Q. That is all I wanted to establish.

You physically are not present on the piers everyday to see the men working, are you? A. No, not everyday.

Q. As a matter of fact, right now it is your specific job to investigate each and every accident and claim that is made against the Pittston Stevedoring Company, be it a

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longshoreman who is injured, or a cargo claim; is that correct? A. Yes, sir.

Q. And the purpose for which your department has been created is in order to minimize and create safety standards to avoid these claims and accidents; is that correct? A. Yes, sir, that is correct.

Q. Would it be fair to say that the company is, in a manner of speaking, up in arms about these new rates of compensation that are being paid under the Longshore Act?

Mr. DiConstanzo: I'll object to the question.

The Court: What relevance does that have?

Mr. Gucciardo: I'll withdraw the question, your Honor.

The Court: Off the record.

(Discussion off the record.)

The Court: On the record.

Q. Mr. Buderwitz, is it not true that as far as the activities at Pier 12 is concerned, or the State Pier that is operated by Pittston Stevedoring Company, that the sole reason that it receives cargo at that pier is to put it on board a vessel? A. Yes.

Q. And is the converse not true, that the sole reason that ships are unloaded is to deliver the cargo received to a consignee? A. Yes.

Q. So that each and every step that is taken physically in relation to cargo received, is part and parcel of the integral steps that must be taken in order to put it on board a vessel? A. Yes, sir.

Q. Just to clarify the record, the merchandise is shipped in by the shipper; it is unloaded by the terminal labor, either by hand or mechanical means such as drivers of Hi-Los and drivers of tractor trailers, and I'm referring now specifically to the hustler and the boogie that is used in the operation, and the cargo that is received is received

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in such a manner that it is timed to be received within a few days from the arrival of the vessel on which it is to be loaded? A. Yes, sir.

Q. And there are many shippers who ship on the same vessel to consignees in foreign ports, or even domestic ports, as the case may be; is that true? A. Yes, sir.

Q. And as part of that operation, the cargo has to be received, then stacked on pallets or stuffed in containers and then the containers are taken to the side of the vessel where it is loaded on to the ship; is that correct? A. A normal terminal operation.

Q. I beg your pardon? A. A normal terminal operation.

Q. And this entire procedure could not be accomplished without the first step of taking it off the truck that is delivered on to the pier until it is finally deposited in its final stowage place on the vessel? A. Correct.

Q. When it is finally loaded on the vessel, the operation of the Pittston Stevedoring Company is at an end in relation to the loading of this cargo; is that correct? A. That particular pier.

I might add that it just so happens that Pittston Stevedoring Corporation at both these piers is both the stevedore and the terminal operator. It is not always the case.

Q. We are only talking about this particular pier. So that this stevedore from the time it receives the merchandise from the truck, until it gets on the vessel, is engaged actually, all of the activities are engaged in preparation for loading the vessel? A. Yes.

Mr. Gucciardo: I have nothing further.

REDIRECT EXAMINATION

Q. (By Mr. DiConstanzo) Mr. Buderwitz, at the particular pier in question at the time of the accident, did

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Pittston conduct both a stevedoring operation and a terminal operation?

Mr. Gucciardo: He just answered that question.

The Court: I thought he did, but let him answer it again.

A. Yes, we conducted both a stevedoring and a terminal operation except with one exception. We did not do any clerking and checking of the cargo.

Q. Who did the clerking and the checking? A. I believe it was an outfit by the name of Hamilton Terminal Corporation.

Q. Now, sir, what is the difference between stevedoring and terminal operation with reference to charges?

Mr. Gucciardo: I must vigorously object to this line of questioning.

What concern do we have with charges?

It has nothing to do with this case.

The Court: I don't know what point counsel was trying to bring out.

Counselor, what precisely is your point on that?

Mr. DiConstanzo: That the stevedoring operation is performed for the vessel, that the terminal operation is conducted, performed for the consignees.

The Court: I'll let the question stand.

You may answer it.

A. Well, the stevedoring operation deals directly with the steamship company and bills the steamship company for any work done aboard its vessel. In receiving cargo from a truck, we charge the trucker for unloading. Conversely for loading of a truck.

The same holds true for delivery to a lighter or to a railroad car.

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Any stuffing and stripping on a dock of a container would, for the most part, be at the request of the steamship company for the consignee.

Mr. DiConstanzo: That is all.

RECROSS EXAMINATION

Q. (By Mr. Gucciardo) There are certain jobs, whether or not they are two companies or one company, that come under one payroll only such as the terminal operation. Yet there are persons on that payroll that regularly go on board a vessel, like yourself, a safety man, and like the superintendent on the pier, and like various foremen on the pier; is that not true? A. Yes.

Q. And they don't switch even where they have two different companies, they don't switch the man from one payroll to another merely because he is going on board a vessel to check an accident or to check a piece of cargo? A. The terminal operator wouldn't send any of its men aboard a ship. They would have no need to.

Q. Do you go on board vessels to investigate accidents? A. Yes.

Q. Do you work for the so-called terminal operator? A. The stevedore.

Q. Because in this particular case he handles both? A. Yes, sir.

Q. But you just acknowledged that there are some operations where they have dual control, one for the terminal and one for the ship? A. Yes, sir.

Q. So I'm just saying, generally speaking, where they have a dual operation, you would be on the terminal payroll, and yet be required to go on board vessels to investigate an accident? A. No, sir.

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Mr. DiConstanzo: I'll object to this line of questioning.

Mr. Gucciardo: All right.

Mr. DiConstanzo: I made reference to the handling of cargo, not investigation of accidents.

The Court: I'm having trouble seeing its relevance.

Mr. Gucciardo: Your Honor, it really doesn't apply to this case. But because we are trying to lay down general principles which will be precedence for other cases I am trying to cover the record as much as possible since it was raised by my adversary.

Q. How about the pier superintendent where there is a dual operation, that is the terminal operator and the stevedoring company on board the vessel, is he not usually on the terminal operator's payroll? A. If you had a terminal operator that was not the stevedore, you had a terminal operations manager. It would be quite rare at any time that he would ever go on board a ship. The stevedores supply their own supervision.

Even in a dual operation where the stevedore is also the terminal operator, the terminal manager very rarely, if ever, goes on board a ship. He has what we call ship superintendents and ships foremen who handle that for him.

Q. If you had a major accident involved on board a ship, doesn't everyone who is a boss on the pier go down and investigate it to check to see what caused it?

Mr. DiConstanzo: I'll object to the question as being incompetent, immaterial and irrelevant.

The Court: Yes, we are. He said he does board ships when there are accidents.

I would like to ask you one further question.

What type of systems did you establish, what type of systems did you establish?

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The Witness: Record systems for delivery and receiving of cargo, revised, various different internal records for better facilitation, billing.

The Court: Are you also in charge of the safety standards?

The Witness: Yes.

The Court: In order to establish a safety standard, you have to know pretty much what the longshoremen are doing, the workmen are doing?

The Witness: Yes.

The Court: You have to look into that as part of your job?

The Witness: Yes.

Mr. Gucciardo: I have no further questions.

The Court: I have no further questions.

Any more witnesses?

Mr. DiConstanzo: No.

The Court: You rest?

Mr. DiConstanzo: Yes.

The Court: These exhibits marked Respondent's 5A and B, do you intend to offer them in evidence?

Mr. DiConstanzo: Yes.

The Court: Any objection?

Mr. Gucciardo: No.

The Court: They will be received in evidence as Respondent's Exhibits 5A and B.

(Respondent's Exhibits 5A and 5B for identification, were received in evidence.)

The Court: I would like to remind counsel for claimant that in the event that he is successful in the case, that he must submit an application for a fee in accordance with 30-CFR-702132.

Mr. Reporter, will you please mail the transcript to the Office of the Administrative Law Judge, Suite 720, 1111 20th Street, Northwest, Washington, D.C. 20036.

Report of Proceedings.

Off the record.

(Discussion off the record.)

The Court: On the record.

Mr. DiContanzo: I will withdraw Respondent's Exhibits 5A and B, it being an original record, and substitute it by submitting to the Reporter here, photostatic copies thereof.

The Court: With copies to Mr. Gucciardo.

Mr. Gucciardo: Yes.

The Court: Off the record.

(Discussion off the record.)

The Court: On the record.

I have set December 10, 1974 as the date that the parties will file their simultaneous briefs in this matter.

In accordance with 20-CFR-702.347 until the briefs have been submitted and a transcript has been delivered to the Administrative Law Judge, the hearing is not officially terminated.

We will, however, stand adjourned at this time.

(Whereupon, at 12:10 p.m., the hearing adjourned.)

(59572)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PITTSTON STEVEDORING CORPORATION,

Petitioner,

v.

JOHN SCAFFIDI,

Respondent.

**AFFIDAVIT
OF SERVICE**

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

Stephen Lashley, being duly sworn, deposes and says that he is over the age of 18 years, is not a party to the action, and resides at 256 West 139th Street, New York, New York
That on March 30, 1976, he served 1 copies of Appendix and 2 copies of Brief for Petitioner

on

Israel, Adler, Ronca & Gucciardo, Esqs.,
Attorneys for Respondent,
160 Broadway
New York, New York 10038

by delivering to and leaving same with a proper person or persons in charge of the office or offices at the above address or addresses during the usual business hours of said day.

Stephen Lashley

Sworn to before me this
30th day of March, 1976

John V. Desjardis
JOHN V. DESJARDIS
Notary Public, State of New York
No. 500932930
Qualified in Nassau County
Commission Expires March 30, 1977